

# **The Unbundled Network Element Platform**

## **Essential for Local Telephone Competition for Residential Consumers\***

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## **Executive Summary**

Almost seven years after the passage of the Telecommunications Act of 1996, some of the anticipated consumer benefits from local phone competition are finally starting to appear. Many of the popular residential service plans that new local service competitors have introduced, such as those with unlimited local and long distance calling, are now threatened by a proceeding currently before the FCC that would deny competitive carriers the right to access the full functionality of the incumbent phone company's local network. Competitive carriers rely upon this access as the only economically feasible means of providing competitive services while building enough market share to justify investing in their own facilities. Without the "UNE-P" serving arrangement, entrants' share of the residential local service market could drop by as much as 77% in some states, effectively killing any nascent local residential competition that presently exists, harming competition in the long distance market, and paving the way for the eventual remonopolization of the local and long distance residential telephone business by the incumbent phone companies.

## **Introduction**

In enacting the *Telecommunications Act of 1996*, Congress cleared the way for competition in the market for local residential telephone service and for the innovations and consumer benefits that were expected to result. Although competing local phone companies ("CLECs") have thus far captured only a single-digit share of the residential market, even this small presence has brought with it significant consumer benefits in the form of innovative service packages and pricing plans, such as:

- Unlimited long distance calling/local calling packages
- Unlimited local calling in places where only measured local service had been offered by the incumbent phone monopoly
- Expanded local calling areas
- Packages of calling features, such as call waiting, voice mail, repeat dial, call back, and caller ID

Consumer benefits such as these are exactly what Congress envisioned with the Act. In enacting the 1996 legislation,

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Congress described the statute's goals as:

An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

Finally, nearly seven years after the passage of the *Act*, plans that realize these goals for residential consumers are finally beginning to appear. The *Wall Street Journal* recently noted that, while not all plans are yet attractive to consumers, “some people who have changed plans are reducing their bills by as much as 30%.”<sup>1</sup> Potential savings would not be confined to customers switching to CLECs. Assuming commensurate ILEC responses to competitive service and pricing initiatives, *all* consumers will benefit through lower phone rates no matter who provides their service. FCC data puts the average residential customer's local phone bill at \$35 per month.<sup>2</sup> Even if only half of the 100.2-million US households were to enjoy savings of that same magnitude, residential consumers would reduce their phone bills by some \$6.3-billion annually. Indeed, this estimate is *conservative*: Increased *local* competition will bring with it increased *long distance* competition as well, resulting in additional consumer benefits. Plans such as MCI's “the Neighborhood” (offered in 42 of 51 states, including 11 rural states)<sup>3</sup> that provide customers with unlimited local and long distance calling along with an extensive array of calling features, are becoming increasingly common and gaining in popularity among consumers. Market watchers have begun to discuss the end of a local/long distance differentiation, allowing residential customers to call friends and relatives across the country as easily as their next-door neighbors. The development and availability of these innovative plans is a direct result of the competition that has been introduced into the local market. The continued existence of these popular and innovative services — and the enormous consumer savings they provide — are now threatened by a proceeding currently before the FCC.

### **Competition in telecom has a long history of providing consumer benefits**

The 1996 law was only the latest government initiative intended to stimulate competition in the telecom industry. That process had its roots in the early 1970s, when the FCC began to intro-

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1. Spencer, Jane, “Why You Have the Wrong Local Phone Service,” *Wall Street Journal*, January 8, 2003, at D1.

2. FCC, *Trends in Telephone Service*, May 2002, Table 3.2, data for year 2000.

3. Rural states are defined as those with population densities lower than the national average according to the US Census bureau.

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duce limited competition in customer premises equipment and long distance. In the case of customer premises equipment (“CPE”), once the FCC adopted the Part 68 “equipment registration” program in 1977 and 1978,<sup>4</sup> stores like Radio Shack, K-Mart, and thousands of other retail outlets could freely manufacture and sell CPE with the assurance that those phones would work when plugged into the phone company’s network. Consumers who had previously been forced to *rent* their phones from the phone company for anywhere between \$1 and \$5 *per month* (depending upon phone type) could now buy them outright, in some cases for as little as \$10. And instead of being limited to a handful of telephone styles all of which were manufactured by the telephone company, consumers now have literally thousands of products from hundreds of manufacturers to choose from.

Long distance competition has similarly flourished since the mid-1980s, a result of the break-up of the former Bell System and the establishment of the “equal access” requirement affording competing long distance companies full “dialing parity” with AT&T on all interLATA and international long distance calling. Importantly, competition in the long distance market did not, and was never expected to, develop on the basis that every competitor would construct its own long distance network. >From the onset of long distance competition, hundreds of individual providers have routinely leased facilities from or resold services produced by the major facilities-based carriers to create their own retail service offerings. Beginning in the mid-1970s, before building out their own networks, both MCI and Sprint provided retail long distance services by *reselling* long distance capacity they purchased from AT&T. Resellers continue to comprise a significant portion of long distance competition, with more than 700 long distance resellers, collectively representing between 35% and 40% of the retail long distance market. *Among the long distance resellers are Bell long distance affiliates that, in all cases, obtain the underlying interexchange network facilities from one or more of the existing facilities-based IXCs.* These network facilities are deeply discounted, with wholesale prices some 55% to 70% less than the facilities-based provider’s retail end-user rates. This combination of facilities-based and resale competition in the long distance market has produced enormous benefits for consumers in the form of increased long distance competition.

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4. *Proposals for New or Revised Classes of Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS)*, Docket no. 19528, *Memorandum Opinion and Order*, Rel. June 20, 1977, 64 F.C.C.2d 1058; *Third Report and Order*, Rel. April 13, 1978, 67 F.C.C.2d 1255.

**Congress established three parallel methods by which competitive local exchange carriers could enter the market and provide local residential service**

While Congress sought to extend the benefits of competition to the local service market, it understood that it was both unrealistic to expect, and economically inefficient to require, that new local phone competitors would or should construct their own networks “from scratch.” Incumbent local phone companies (“ILECs”) had been developing their network infrastructures for more than a century. As government-protected monopolies, the ILECs’ capital investments were all but guaranteed and were long considered to be nearly “riskless” from the investors’ perspective. Consumers subsidized these capital investments by paying higher rates when the ILEC’s revenues fell below the authorized rate of return. The same financial guarantee is not available to CLECs and their investors, a fact that has become painfully clear over the past several years as CLEC share prices plummeted and many start-ups went bankrupt. Recognizing the formidable economic barriers that CLECs would have to confront if required to construct their own networks, the 1996 Act provided for competition through three distinct modes of competitive entry, or combinations thereof:

- CLEC built facilities, where the CLEC constructs its own telephone network on top of that of the incumbent phone company;
- Resale of ILEC retail services acquired by the entrant at a “wholesale discount,” and
- Use of “unbundled network elements” (“UNEs”) leased from incumbent phone companies, including collections of individual UNEs that together create a full working “dial tone” service, known as the UNE-Platform (“UNE-P”).

CLECs currently utilize each of these methods, to differing degrees and in various combinations, to serve their residential customers. Congress did not express a preference for any one method, and the FCC has accepted all three as proof of the existence of local competition.<sup>5</sup> For reasons explained below, neither facilities-based nor resale is a feasible method of entry for most CLECs

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5. *In the Matter of Application of Ameritech Corp. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, *Memorandum Opinion and Order*, Rel. August 19, 1997, at paras. 62-104.

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interested in serving residential customers. Without UNEs and UNE-P, residential consumer competition would never develop as Congress had intended.

### ***CLEC-built facilities***

Of the three approaches, CLEC-built facilities impose the most severe entry barriers for serving residential customers. This method of entry is only possible for large cable television providers willing to invest the capital to upgrade their existing distribution networks to support voice telephony; it is *not* a practical entry strategy for other CLECs, and indeed the duplication of existing ILEC distribution infrastructure would be enormously wasteful of the nation's economic resources. Although cable television facilities pass the vast majority of all US homes, many cable providers lack the experience and capital necessary to upgrade their networks to provide local phone service, and have chosen not to pursue the local phone service market.<sup>6</sup> Even if cable providers did start actively pursuing local telephone customers while other CLECs exited this sector, the resulting "competition" would at best consist of a *duopoly* with the ILEC. Experience with duopolies in wireless teaches that effective competition requires considerably more than two firms in a market.

Competition based upon CLEC-built facilities (apart from cable) has been confined largely to areas of high concentration of telecommunications demand and to individual customers who require large quantities of service — mostly medium and large businesses, institutions and government agencies. For the most part, facilities-based entry has proven to be uneconomic and inefficient as the means for serving residential and small business customers.

### ***Resale arrangements***

Resellers of ILEC services are able to purchase at wholesale rates (typically at discounts of 10% to 25% off of the ILEC's retail rate) any service or package of services that an ILEC offers to its own retail customers. The CLEC is therefore restricted to offering the exact same services or packages as are being offered by the ILEC, thus limiting innovation and making it difficult for an entrant to differentiate its product. Many CLECs have concluded that the operating margin available to them as a result of the often modest wholesale discount is simply not sufficient to

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6. As many as 23% (approximately 2.5-million) of all CLEC residential lines may be served over coaxial cable (FCC *Local Competition Report*, December 2002, at Tables 2 and 5). Given AT&T's recent spin-off of its cable system to Comcast, it is not at all certain that cable operators will continue to expand their investments in residential telephone service.

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support the various marketing, retailing, billing, and customer care expenses for which the CLEC is responsible under this method of entry.

### ***UNE-Loop***

Many of the competing services that have been targeted to residential customers have been constructed out of combinations of unbundled network elements leased from ILECs. In many cases, CLECs will lease only the “subscriber loops” — the wires connecting the ILEC central office with the CLEC’s customers’ premises. At the ILEC central office, the CLEC will interconnect the “UNE-loop” (“UNE-L”) to its own central office, where its switch is located. This interconnection typically takes place at a “co-location cage” in the ILEC central office that is leased by the CLEC. While this arrangement permits the CLEC to compete without “stringing its own wires,” it is still a costly and time-consuming approach that works economically only where the CLEC has a considerable number of customers in a given ILEC central office. And that simply does not happen with sufficient frequency to serve as the basis for a CLEC’s business model.

By providing service using their own switch, CLECs are able to gain access revenues associated with origination and termination of long distance calls (or avoid paying access charges to the ILEC if the CLEC is itself providing long distance service to the customer, perhaps bundled with local service, such as MCI’s “The Neighborhood”). In addition, CLECs gain the functionality of the switch (including such features as call waiting and caller ID) at a tiny fraction of the price they would have to pay ILECs for this functionality under resale arrangements, savings they are able to pass along to consumers by including such features in their basic service package. This flexibility however, comes at a considerably up-front cost: Co-location in an ILEC central office is an expensive undertaking. ILECs impose large fees for the construction of the “cage” and associated power and environmental conditioning, recurring rental charges, and various connection charges for interconnecting the ILEC’s subscriber loops with the CLEC’s co-location space. Unless the CLEC is serving or can expect to serve a sufficiently large number of customers in a given ILEC central office, co-location is simply far too costly to be pursued. At the same time, CLECs cannot afford to limit their service offerings to only those areas in which they are able to justify co-location with the ILEC. Nationally, ILECs maintain some 10,000 individual central office buildings; CLEC co-location would be economically feasible in only a small fraction of these.

### ***UNE-P***

UNE-Platform (“UNE-P”) service arrangements offer the solution to the prohibitive co-location costs that allow CLECs to mirror the flexibility of a self-provided switch. With UNE-P, CLECs are able to lease both the subscriber loop *and* the switching functions from the ILEC, and

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to have the ILEC physically interconnect these separate UNEs to form a working “dial tone” service arrangement known as “UNE-Platform” *without requiring a CLEC co-location presence in the ILEC central office*. Using UNE-P, CLECs are able to offer residential customers service packages and features similar to what they could do with their own switch and UNE-L arrangements leased from the ILEC, but without the risky and prohibitive start up costs attendant to co-location in each ILEC central office building.

ILECs relied upon the existence of UNE-P competition in order to gain in-region long distance authority under Section 271 of the Act.<sup>7</sup> However, because of its importance in facilitating CLEC entry and competition, ILECs now want to change the rules, and have challenged the requirement that they provide UNE-P arrangements.<sup>8</sup> ILECs now claim that real competition requires that competitors build and provide service over their own networks, while wholesale competition “is basically an illusion created with artificially low prices that allow their [the ILECs’] rivals to offer Bell service under their own names without having to invest in providing the service.”<sup>9</sup> Having had their position rejected by the United States Supreme Court,<sup>10</sup> ILECs are now asking the FCC to eliminate the UNE-P requirement altogether.

If the FCC’s grants the ILEC’s request, it will pull UNE-P availability out from under CLECs just as some CLECs begin to realize market successes. CLECs that have built business

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7. See e.g., *In the Matter of Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, *Memorandum Opinion and Order*, Rel. June 24, 2002, at para. 13.

8. *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Notice of Proposed Rulemaking, Rel. December 20, 2001.

9. Dreazen, Yochi J. and Young, Shawn, “FCC Plans to Erase Key Rule on Local Phone Competition,” *Wall Street Journal*, January 6, 2003, page 1.

10. *Verizon Communications Inc. et al. v. Federal Communication Commission et al.*, U.S. Supreme Court No. 00-511 certiorari to the United States Court of Appeals for the Eighth Circuit, Decided May 13, 2002. *AT&T Corp. et al. v. Iowa Utilities Bd. Et al*, U.S. Supreme Court No. 97-826 certiorari to the United States Court of Appeals for the Eighth Circuit, Decided January 25, 1999.



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plans and customer bases dependent upon UNE-P entry will be left with little recourse but to abandon many markets where they simply have not had the time or opportunity to develop a customer base large enough to justify significant investment.

**The continued availability of UNE-P will not discourage CLECs from pursuing economically prudent facilities investments**

Table 1			
Percent Growth in CLEC Residential Lines by Serving Method			
	Lines in SBC Local Service Area		
	Residential Resale lines provided	Residential UNE-L lines provided	Residential UNE-P lines provided
December-99	1,181,529	287,024	109,296
June-01	1,079,786	878,955	1,570,919
Percent growth	-8.61%	206.23%	1337.31%
Source: Miscellaneous data from FCC Form 477, "Selected RBOC Local Telephone Data," June 30, 2002. Available at: <a href="http://www.fcc.gov/wcb/iatd/comp.html">http://www.fcc.gov/wcb/iatd/comp.html</a> . Nevada excluded.			

Contrary to ILEC claims that UNE-P discourages CLEC investment, CLECs have continued to invest in their own switches and in subscriber facilities to serve residential customers, even after UNE-P became widely available. CLECs are using UNE-P to replace resale lines and, more importantly, to provide a means for expanding their service offerings to consumers in numerous geographical areas. UNE-P arrangements provide CLECs with the opportunity to launch new service plans based upon switch functionality, possibly replacing UNE-P type service with UNE-L service once a critical threshold of customers is reached in a given wire center. For customers in wire centers that never reach that threshold, the end of UNE-P would practically ensure that they could never receive service from any carrier other than the ILEC.

Where they have sufficient customers, CLECs continue to invest in their own facilities to serve residential customers. In the SBC region, for example, total CLEC residential lines have grown since 1999, as have the number of CLEC lines provided over UNE-L and UNE-P service arrangements; only the number of residential resale lines decreased during this period.

Further supporting the contention that CLECs continue to invest in their own facilities, recent FCC filings by MCI confirm that, with certain regulatory changes and after achieving a

critical market share, MCI will be able to migrate many of its current UNE-P local customers to UNE-L.<sup>11</sup>

## **Can residential competition survive without UNE-P?**

A recent study filed by SBC in the FCC's triennial review proceeding demonstrates the importance of UNE-P availability to CLECs, especially when competition is in its early stages. SBC's analysis of the feasibility of switch-based competition (via UNE-L) in three of its states actually underscores the importance of UNE-P to the development of CLEC market share. In its study, SBC assumed that MCI has deployed switches to serve residential customers in wire centers with 5,000 or more lines (which, according to SBC, accounts for 57.7% of SBC wire centers) in suburban and rural areas. In California, Michigan and Texas, the SBC study recognized that MCI would be unable to cover its UNE-L provisioning costs unless MCI set its retail prices (for residential customers) above \$50 per month *and* had a market share of at least 5% *in each wire center with more than 5,000 lines*.<sup>12</sup> Recent AT&T filings have indicated that retail prices would have to be significantly higher than \$50.<sup>13</sup> Achieving this specific distribution of customers and central office-specific market share requires considerable time and marketing expense. Moreover, that effort could not even get underway unless the CLEC were able to commit the substantial up-front investment cost to establish a co-location presence in each central office. SBC's study did not even address the situation in small central offices (those with fewer than 5,000 lines), where a co-location investment is unlikely to ever break even, except to assert that a CLEC would be able to subsidize such wire centers with margins from large wire centers.<sup>14</sup> UNE-P does not require a CLEC co-location presence and thus can be profitable even

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11. *UNE Triennial Review*, CC Docket 01-338, *Written Ex Parte Filing by WorldCom*, January 8, 2003.

12. As SBC notes, "wire centers with fewer than 5000 lines account for a minority of all subscriber lines, notwithstanding that they represent almost half (42.3%) of SBC's wire centers..." In addition, SBC realized that the margin in larger wire centers must be sufficient to offset any losses a CLEC were to incur in wire centers with less than 5% penetration, as well as losses from providing UNE-L service in wire centers with fewer than 5000 lines.

13. *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, *Ex Parte* Submission of AT&T, CC Docket Nos. 01-338, 96-98, 98-147 (filed January 17, 2003).

14. *Ex Parte* Presentation by James C. Smith of SBC Telecommunications, Inc. in CC Docket No. 01-338, 96-98, 98-147 (filed January 14, 2003), at 2. SBC does not bother to explain exactly how such subsidization could be sustained in a competitive market, where a CLEC that elected to engage in such cross-subsidization, and thus to burden its services in lower-cost areas

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if only a handful of customers in a given central office order the CLEC's service.

A CLEC's ability to provide service over UNE-L depends critically upon both the aggregate number of customers *and the geographic distribution by wire center* of those customers. As such, CLECs are not currently positioned to serve the local residential market without ILEC switching *in those central offices in which the co-location investment is not economically justified*. In fact, UNE-P is the dominant method by which CLECs serve residential consumers, as shown in the Table 2 for SBC states. (SBC is the only ILEC for which specific residential and small business UNE-P data is available.):

<b>Table 2</b>					
<b>CLEC Provision of Residential Service In SBC Territory by Service Method</b>					
<b>Holding Company</b>	<b>State</b>	<b>CLEC Residential &amp; Small Business Lines provided over Resale</b>	<b>CLEC Residential &amp; Small Business UNE-L Lines</b>	<b>CLEC Residential &amp; Small Business UNE-P Lines</b>	<b>Percent of CLEC Residential &amp; Small Business Served over UNE-P</b>
SWBT	Arkansas	33,162	12,999	19,402	29.59%
Pacific Bell	California	177,536	293,357	55,223	10.50%
Ameritech	Illinois	160,949	219,187	298,905	44.02%
Ameritech	Indiana	27,404	24,686	6,801	11.55%
SWBT	Kansas	72,927	6,102	64,054	44.77%
Ameritech	Michigan	99,314	110,935	422,281	66.76%
SWBT	Missouri	81,833	17,620	42,776	30.08%
Ameritech	Ohio	48,173	78,739	49,048	27.87%
SWBT	Oklahoma	43,828	6,935	23,529	31.67%
SWBT	Texas	236,156	114,953	1,174,875	76.99%
Ameritech	Wisconsin	30,556	119,430	11,049	6.86%
Total SBC		1,011,838	1,004,942	2,167,944	51.81%
Notes: Data for SBC excludes Nevada, SNET Connecticut.					
Source: Miscellaneous data from FCC Form 477, "Selected RBOC Local Telephone Data," June 30, 2002.					
Available at: <a href="http://www.fcc.gov/wcb/iatd/comp.html">http://www.fcc.gov/wcb/iatd/comp.html</a>					

with higher prices in order to fund the subsidy, would be forced to compete with other CLECs that do not adopt this practice. The type of subsidization being suggested by SBC can only be sustained if the market is not subject to competition.

## **Removing CLEC access to UNE-P would decimate local residential competition**

If the FCC were to revoke or further limit the CLECs' right to obtain UNE-P, many CLECs would be forced to find other ways to provision service to as many as 77% of residential customers<sup>15</sup> or, failing that, withdraw altogether their service offers to residential consumers. While it may be feasible for some CLECs to continue to serve some percentage of these customers through UNE-L, it is most likely that in many wire centers individual CLECs (or all CLECs combined) will simply not have the customer volume sufficient to support a co-location presence or the use of CLEC-built facilities. Given the importance of UNE-P to residential customers, together with the unacceptably high cost of any of the alternative service strategies, it is unlikely that even the limited amount of residential competition that exists today could survive. In that event, the residential local service market would once again be ceded to the incumbent local phone companies.

As illustrated by Table 2 below, competition develops at differing rates and via different means in different states. The states, not the FCC, are most appropriately equipped to determine the impact and decide the fate of UNE-P requirements. As recognized by the appellate court, state regulators are best equipped to take into account the competitive nature of particular geographic and customer markets.<sup>16</sup>

## **UNE-P availability is critical for residential competition in rural areas**

Elimination of UNE-P would all but wipe out any serious competitive challenge to ILEC dominance in rural states and in rural areas of larger states, where the critical mass needed to support a co-location presence is rarely available in individual ILEC wire centers. FCC data confirm that such competition as does presently exist for residential and small business customers in many rural jurisdictions is heavily dependent upon UNE-P. CLECs in Kansas, for example, provide approximately 70% of their total residential lines over UNE-P.<sup>17</sup>

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15. See Table 2.

16. *United States Telecom Association v. Federal Communications Commission*, 290 F.3d 415, 422-423 (D.C. Cir. 2002).

17. Total Residential CLEC lines are estimated From Tables 6 and 9 of the FCC's Local Competition Report. Residential UNE-P lines according to PACE UNE-P Fact Report, January 2003.

## **Without effective local competition, ILECs will come to dominate residential long distance services**

Bundled packages of unlimited local and long distance service are blurring the traditional lines between “toll” and “local” calling. In addition, RBOC reentry into the long distance market through the now virtually complete “Section 271” process has reintroduced the importance of an ILEC’s legacy *local* market share for continued competition in the *long distance* market. Prior to the 1984 break-up, Bell companies’ dominance of the long distance market was a direct consequence of their *local service* monopoly. Now, the BOCs are able to recreate this enormous advantage by leveraging their local market dominance via “joint marketing” of local and long distance services. Unlike competing long distance companies, which must engage in extensive advertising, telemarketing, and special promotions and giveaways to attract customers, ILECs can simply wait for prospective *long distance* customer to call *them* to order new *local* phone service, and then use those *customer-initiated* contacts as the opportunity to sell long distance as well. Recent disclosures by SBC regarding the company’s experience in Connecticut confirm the success of this type of “joint marketing.” According to SBC, more than 50% of local service customers who were offered SBC long distance service accepted the customer service agent’s “recommendation.”<sup>18</sup> SBC also indicated that it anticipated that in “mature” long distance markets with BOC presence, the long distance affiliate would ultimately control in excess of 60% share of residential customers. Verizon recently announced that it has replaced Sprint as the nation’s third largest long distance company<sup>19</sup> after just three years following its initial entry in New York. Verizon has not yet obtained Section 271 authority in all of its states and still does not actively market long distance service outside of its local service footprint, yet accomplished a level of market penetration in just three years that it had taken Sprint twenty years to attain.

The ILECs’ ability to rapidly acquire long distance customers is a direct consequence of their continued dominance of the local market. Most customers have few choices when it comes to local phone service, and when they call “the phone company” to order new local service they are “sold” long distance service at the same time. The erosion of what little local competition exists today as a result of UNE-P elimination would work to erode long distance competition as well, leading to higher prices and fewer choices for consumers. Indeed, after just a few months of selling long distance service, SBC raised its consumer long distance prices *despite the presence of competing nonaffiliated long distance companies*. As BOC long distance market shares rise and competitor shares fall, additional price hikes for consumers seem all but inevitable.

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18. *SBC Communications - 3Q 2002 Financial Release Conference Call*, October 24, 2002. (The audio file is available at: <http://www.firstcallevents.com/service/ajwz368853844gf12.html>)

19. Verizon press release, *Verizon Now Third Largest Long Distance Company*, January 7, 2003, at [http://investor.verizon.com/news/vz/2003-01-07\\_x688674.html](http://investor.verizon.com/news/vz/2003-01-07_x688674.html)

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As long as ILECs are permitted to exploit captive relationships with the vast majority of local service customers to market and sell long distance services, ILEC long distance shares will grow rapidly and non-ILEC long distance companies will suffer a precipitous decline in customers and demand. Faced with such losses, non-ILEC long distance carriers' costs will rise and at least some IXC's will be forced to exit the business, further exacerbating the situation and affording the ILECs an additional opportunity to remonopolize the nation's long distance market.

## **Conclusion**

Continued availability of UNE-P is critical to continued competition in the residential local service market and, in particular, to the ability of CLECs to offer services in smaller communities and rural areas. Seven years have passed since enactment of the 1996 law, yet the development of effective and sustainable competition in local phone service is still elusive. Without UNE-P, what little competitive choices presently exist for residential consumers will almost surely diminish and, in many parts of the country, will vanish altogether. In this event, the ILECs will remain as the consumer's only choice for residential local (and quite possibly long distance) service providers. These ILECs will operate as virtual unregulated monopolies, with little that state or federal regulatory commissions could do to protect consumers. No valid public policy goal is served by ceding the local residential market to the incumbent local phone companies, yet that is precisely what will happen if the FCC accedes to the ILECs demands and eliminates or otherwise limits the *requirement* that ILECs provide UNE-P to CLECs.